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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 15, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC-2002-00115

Ex Parte: In the matter of  
rules governing  
competitive local exchange  
carriers, localities as  
competitive local exchange  
carriers, and local  
inter-carrier matters

ORDER FOR NOTICE AND COMMENT AND/OR  
REQUESTS FOR HEARING ON PROPOSED RULES

On December 13, 1995, the State Corporation Commission ("Commission") adopted Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Exchange Rules") in Case No. PUC-1995-00018.<sup>1</sup> The Local Exchange Rules were promulgated under the Commission's authority pursuant to §§ 12.1-13 and 56-265.4:4 B of the Code of Virginia ("Code") and are currently codified in Chapter 400 of the Virginia Administrative Code ("VAC"), 20 VAC 5-400-180.

Since the Local Exchange Rules were adopted, the process for the certification and regulation of competitive local exchange carriers ("CLECs") has been evolving. The Commission

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<sup>1</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of investigating local exchange telephone competition, including adopting rules pursuant to Virginia Code § 56-265.4:4 C 3, Case No. PUC-1995-00018, 1995 S.C.C. Ann. Rept. 249.

has issued numerous certificates and orders pertaining to the provision and regulation of local exchange telecommunications services. In addition, recent legislation permits the Commission to grant certificates to provide local exchange telecommunications services to certain localities. The Commission, therefore, believes that it is timely to consider updating the Local Exchange Rules.<sup>2</sup>

First, current 20 VAC 5-400-180 would be repealed, and a new VAC chapter, 20 VAC 5-417-10, et seq., would be adopted. This chapter would be titled Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers ("Proposed Local Exchange Rules"). The Proposed Local Exchange Rules are based upon the existing Local Exchange Rules and are updated to reflect matters arising since the Local Exchange Rules' adoption. The Commission also is proposing to incorporate within the Proposed Local Exchange Rules new requirements for localities seeking certification to provide local exchange telecommunications services pursuant to § 56-265.4:4 B of the Code. These new provisions address Chapters 479 and 489 of the 2002 Acts of Assembly ("Chapters 479 and 489"), which authorize certain localities to provide telecommunications services,

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<sup>2</sup> The Virginia Code Commission (the "Code Commission") adopted the Virginia Register Form, Style and Procedure Manual containing certain stylistic, editorial, or organizational requirements for regulations contained in the VAC. The rules proposed in this matter are in conformance with the requirements of the Code Commission.

including local exchange telecommunications services, by obtaining such a certificate. The Proposed Local Exchange Rules are contained in Attachment 1 to this Order.

Second, certain provisions of the Local Exchange Rules would be incorporated into a second new chapter, 20 VAC 5-429-10, et seq., titled Rules Governing Compensation, Numbering, Interconnection, and Other Local Inter-Carrier Matters ("Proposed Inter-Carrier Rules"). These provisions govern interconnection, terminating traffic compensation, number portability and number assignment, and universal service. Generally, only stylistic, editorial, or organizational changes are being proposed to these provisions. Issues contained within these provisions, which were previously addressed in proceedings before the Commission, will not be reopened for consideration at this time. However, the Commission is proposing to incorporate several new definitions or provisions to ensure consistency with existing Commission policy, the Proposed Local Exchange Rules, and the enactment of Chapters 479 and 489 as described above. The Proposed Inter-Carrier Rules are contained in Attachment 2 to this Order.

NOW UPON CONSIDERATION of the proposed rules found in Attachments 1 and 2 hereto, the Commission is of the opinion and finds that public notice of the attached proposed rules should be given and that interested persons should be afforded an

opportunity to file written comments, propose modifications or supplements, or request a hearing on the proposed rules.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUC-2002-00115.

(2) A copy of this Order and Attachments 1 and 2 shall forthwith be made available for public review between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, at the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. A copy of this Order and Attachments 1 and 2 will be provided free of charge upon written request to Joel H. Peck, Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218. This Order and Attachments 1 and 2 shall also be made available for public access on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(3) The Commission's Division of Information Resources shall forward this Order and Attachments 1 and 2 to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) On or before October 31, 2002, the Commission's Division of Information Resources shall publish the following

notice once as classified advertising in newspapers of general circulation throughout the Commonwealth:

NOTICE TO THE PUBLIC OF PROPOSED  
RULES GOVERNING COMPETITIVE LOCAL  
EXCHANGE CARRIERS  
CASE NO. PUC-2002-00115

On December 13, 1995, the State Corporation Commission ("Commission") adopted Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Exchange Rules") in Case. No. PUC-1995-00018. Since these were adopted, the process for the certification and regulation of competitive local exchange carriers ("CLECs") has been evolving. The Commission has issued numerous certificates and orders pertaining to the provision and regulation of local exchange telecommunications services. In addition, recent legislation permits the Commission to grant certificates to provide local exchange telecommunications services to certain localities. The Commission, therefore, believes that it is timely to consider updating the Local Exchange Rules.

First, current 20 VAC 5-400-180 would be repealed, and a new VAC chapter, 20 VAC 5-417-10, et seq., would be adopted. This new chapter would be titled Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers ("Proposed Local Exchange Rules"). The Proposed Local Exchange Rules are based upon the existing Local Exchange Rules and are updated to reflect matters arising since the Local Exchange Rules' adoption. The Commission also is proposing to incorporate within the Proposed Local Exchange Rules new requirements for localities seeking certification to provide local exchange telecommunications services pursuant to § 56-265.4:4 B of the Code. These new provisions address Chapters 479 and 489 of

the 2002 Acts of Assembly ("Chapters 479 and 489"), which authorize certain localities to provide telecommunications services, including local exchange telecommunications services, by obtaining such a certificate.

Second, certain provisions of the Local Exchange Rules governing interconnection, terminating traffic compensation, number portability and number assignment, and universal service would be incorporated into a second new chapter, 20 VAC 5-429-10, et seq., titled Rules Governing Compensation, Numbering, Interconnection, and Other Local Inter-Carrier Matters ("Proposed Inter-Carrier Rules"). Generally, only stylistic, editorial, or organizational changes are being proposed to these provisions. Issues contained within these provisions, which were previously addressed in proceedings before the Commission, will not be reopened for consideration at this time. However, the Commission is proposing to incorporate several new definitions or provisions to ensure consistency with existing Commission policy, the Proposed Local Exchange Rules, and the enactment of Chapters 479 and 489 as described above.

A copy of the Commission's Order, together with Attachments 1 and 2 which contain the proposed rules, may be reviewed between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, at the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. A copy of the Order and Attachments 1 and 2 will be provided free of charge upon written request to Joel H. Peck, Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218. Interested persons may also obtain a copy of the Order and Attachments 1 and 2 from the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

On or before November 27, 2002, any interested person who wishes to comment on, propose modifications or supplements to, or request a hearing on the proposed rules may file an original and fifteen (15) copies of written comments or requests with the Clerk of the Commission at the address set forth above.

The comments and requests for hearing shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC-2002-00115. Any request for hearing shall state in detail the reasons why the issues cannot be adequately addressed in written comments. Should no sufficient request for hearing be filed, the Commission may proceed upon the papers filed herein and without scheduling a hearing at which testimony would be received.

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(5) The Commission's Division of Information Resources shall promptly file with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above, proof of the publication of the notice as required by Ordering Paragraph (4) above.

(6) On or before November 27, 2002, interested persons wishing to comment on or to propose modifications or supplements to the proposed rules may file an original and fifteen (15) copies of such written comments, modifications, or supplements with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above. The comments shall set forth the

individual's interest in the proceeding and shall refer to Case No. PUC-2002-00115.

(7) On or before November 27, 2002, interested persons wishing to request a hearing on the proposed rules shall file an original and fifteen (15) copies of a written request with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above. Any request for hearing shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC-2002-00115. Any request for hearing shall state in detail the reasons why the issues cannot be adequately addressed in written comments. Should no sufficient request for hearing be filed, the Commission may proceed upon the papers filed herein.

(8) This matter is continued for further orders of the Commission.



CHAPTER 400.

TELECOMMUNICATIONS.

~~20 VAC 5-400-180. Rules governing the offering of competitive local exchange telephone service.~~

~~A. Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Incumbent local exchange telephone company" or "incumbent" means a public service company providing local exchange telephone service in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity.~~

~~"Interconnection" means the point of interface between local exchange carriers' networks. Interconnection can be achieved at different points of the network.~~

~~"Interim number portability" means the service provided in lieu of true number portability. Interim solutions available from the incumbent local exchange telephone company, which include remote call forwarding and direct inward dialing, enable customers to change providers without the appearance of changing telephone numbers, but rely on the incumbent's network to process some or all calls.~~

~~"Local exchange carriers" means all certificated providers of local exchange telephone service, whether incumbents or new entrants.~~

~~"Mutual exchange of traffic" means the reciprocal arrangement by which local exchange carriers terminate the local calls of other local exchange carriers' customers on their networks.~~

~~"New entrant" means an entity certificated to provide local exchange telephone service in Virginia after January 1, 1996, under §56-265.4:4 C of the Code of Virginia. An incumbent local exchange telephone company shall be considered a new entrant in any territory for which it obtains a certificate to provide local exchange service on or after January 1, 1996, in accordance with these rules and which is outside the territory it is certificated to serve as of December 31, 1995.~~

~~"Terminating compensation" means the payment or other exchange mechanism used by local exchange carriers for terminating the local exchange traffic of other local exchange carriers.~~

~~"True number portability" means the technical capability of a competing local exchange carrier to allow customers to retain their telephone number when they change providers (without a change in location) without reliance on calls being routed through the end office where the original NXX is assigned.~~

~~"Unbundling" means the process by which a local exchange telephone carrier's network is disaggregated into functional components.~~

~~B. — Certification requirements.~~

~~1. — An original and 15 copies of an application for a certificate of public convenience and necessity shall be filed with the Clerk of the State Corporation Commission.~~

~~2. — Notice of the application shall be given to all local exchange carriers in the applicant's proposed service territory. Each applicant shall publish notice in newspapers having general circulation in the proposed service territory in a form to be prescribed by the commission.~~

~~3. The application shall identify the applicant including (i) its name, address, and telephone number; (ii) the name, address, and telephone number of its corporate parent or parents, if any; (iii) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals; (iv) the names, addresses, and telephone numbers of its legal counsel; and (v) any other identifying information the commission determines to be necessary.~~

~~4. Each incorporated applicant shall demonstrate that it is authorized to do business in the Commonwealth of Virginia as a public service company.~~

~~5. Applicants shall be required to show their financial, managerial, and technical ability to render local exchange telephone service.~~

~~a. As a minimum requirement, a showing of financial ability shall include the applicant's most recent audited financial statements, most recent stockholders annual report and most recent SEC Form 10-K if the company is publicly traded.~~

~~b. To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing telecommunications or other relevant services, if any; shall list the geographic areas in which it has and is currently providing service; and shall list the experience of each principal officer.~~

~~c. The applicant shall demonstrate its technical ability by attaching a description of its experience in providing telecommunications or other relevant services, if any, or the applicant may provide other documentation which supports its technical abilities.~~

~~6. Each application for a certificate to provide local exchange service shall include the applicant's initial tariffs, which shall include rules, regulations, terms, and conditions. Applicants that desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with subsection D of this section.~~

~~7. The applicant shall file maps or other acceptable documents with the application for certification in sufficient detail to designate the actual geographic area or areas to be served. Such maps should also identify each proposed initial local calling area of the applicant.~~

~~8. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in subsection D of this section.~~

~~C. Conditions for certification.~~

~~1. In the public interest evaluation of the applicant's request for a certificate to provide local exchange service, the commission will, at a minimum, require a new entrant, either directly or through arrangements with others, to provide the following:~~

- ~~a. Access to 911 and E911 services;~~
- ~~b. White page directory listings;~~
- ~~c. Access to telephone relay services;~~
- ~~d. Access to directory assistance;~~
- ~~e. Access to operator services;~~
- ~~f. Equal access to interLATA long distance carriers;~~

~~g. — Free blocking of 900 and 700 type services so long as the same requirement applies to incumbent local exchange companies; and~~

~~h. — Interconnection on a nondiscriminatory basis with other local exchange telephone service companies.~~

~~2. — To the extent economically and technically feasible, the new entrant should be willing and able to provide service to all customers in the same service classification in its designated geographic service area in accordance with its tariff offerings.~~

~~3. — The new entrant shall have procedures to prevent deceptive and unfair marketing practices.~~

~~4. — The new entrant shall comply with applicable commission service and billing standards or rules.~~

~~5. — The new entrant shall, at a minimum, comply with the applicable intraLATA access requirements of incumbent local exchange telephone companies as determined in Case No. PUC850035, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: Investigation of competition for intraLATA, interexchange telephone service (20 VAC 5-400-120).~~

~~D. — Regulation of new entrants providing local exchange telephone service.~~

~~1. — Unless otherwise allowed by the commission, tariffs are required for all local exchange service offerings except those that are comparable to "competitive" offerings of the incumbent telephone company that do not require tariffs. The~~

~~commission may convene a hearing to determine the applicable requirements and classification of any new entrant's local exchange service offerings.~~

~~2. The new entrant may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings.~~

~~3. Unless otherwise allowed by the commission, prices for local exchange services provided by the new entrant shall not exceed the highest of the comparable tariffed services provided by the incumbent local exchange telephone company or companies in the same local serving areas. Tariff changes within this price ceiling plan shall be implemented as follows:~~

~~a. Price decreases shall become effective on one day notice to the commission.~~

~~b. Price increases below ceiling rates shall become effective after 30 days notice is provided to the commission, and notice to customers is provided through billing inserts or publication for two consecutive weeks as display advertising in newspapers having general circulation in the areas served by the new entrant.~~

~~c. Price ceilings shall be the highest tariffed rates as of January 1, 1996, for comparable services of any incumbent local exchange telephone company or companies serving within the certificated local service area of the new entrant. Price ceilings shall be increased as the highest tariffed rate of an incumbent is raised through applicable regulatory procedures. Unless otherwise determined by the commission, price decreases for an incumbent's service,~~

~~whether initiated by the carrier or adopted by the commission, shall not require a corresponding decrease in the price ceilings applicable to the new entrant.~~

~~d. — The commission may permit pricing structures or rates of a new entrant's local exchange service(s) that do not conform with the established price ceilings, unless there is a showing that the public interest will be harmed.~~

~~e. — These pricing requirements shall not apply to a new entrant's services that: (i) are comparable to services classified as competitive for the incumbent, or (ii) have been provided regulatory treatment different than that specified by these rules.~~

~~4. — Services offered by the new entrant that are not comparable to services offered by the incumbent and for which the commission has not provided regulatory treatment different than that specified by these rules shall be filed with 30 days notice to the commission. Price decreases for these services shall become effective on one day notice to the commission. Price increases shall become effective after 30 days notice to the commission and notice to customers in the manner prescribed by subdivision 3 b of this subsection.~~

~~5. — A new entrant may, pursuant to §56-481.2 of the Code of Virginia, submit an alternative regulatory plan to that described in this section for the commission's consideration in the applicant's certification proceedings or at a later date.~~

~~6. — No form of earnings regulation shall be required for the regulation of new entrants. However, new entrants shall be required to file financial and other reports as~~

~~identified in subsection E of this section to enable the commission to evaluate the effectiveness of local exchange telephone competition.~~

~~7. — No new entrant providing local exchange telephone service shall abandon or discontinue local exchange service except with the approval of the commission, and upon such terms and conditions as the commission may prescribe.~~

~~8. — Should the commission determine that the form of regulation of new entrants does not effectively, or is no longer necessary to, regulate the prices of their services, it may, pursuant to §56-481.2 of the Code of Virginia, modify the form of regulation.~~

~~E. — Financial and reporting requirements for new entrants.~~

~~1. — All providers of local exchange telephone service certificated under this regulation shall be required to file the following reports with the commission's Division of Economics and Finance:~~

~~a. — Annual report on the number of access lines by local exchange area and classified by residential and business lines.~~

~~b. — Annual price list for all detariffed competitive local exchange telephone services provided by the applicant.~~

~~c. — Quarterly statement of units and revenues for all competitive telephone services provided by the applicant.~~

~~d. — Audited financial statement, stockholders annual report, SEC Form 10-K and FCC Form M for the parent company and the new entrant, if available.~~



~~2. Reports and information required by the Division of Public Service Taxation in performing its functions under §§58.1-2600 through 58.1-2690 of the Code of Virginia shall be filed with the commission's Division of Public Service Taxation.~~

~~3. A new entrant shall be required to remit the telecommunications relay surcharge amount to the commission pursuant to the October 5, 1990, order issued in Case No. PUC900029, Commonwealth of Virginia at the relation of the State Corporation Commission Ex Parte: In the matter of implementing dual party relay service pursuant to Article 5, Chapter 15, Title 56 of the Code of Virginia (20 VAC 5-400-170). The remittance, along with any other required information, shall be made to the commission's Division of Public Service Taxation.~~

~~4. Any expansion or reduction of the geographic service area of a new entrant that does not involve an expansion of the territory covered by an existing certificate shall require the filing of amended maps or other acceptable documentation with the commission's Division of Communications.~~

~~5. Upon request of the commission staff, any new entrant shall file such other information with respect to any of its services or practices as may be required of public service companies under Virginia law.~~

~~6. A new entrant, determined by the commission to have a monopoly over any of its services, whether or not those services are telephone services, shall file annual data to demonstrate that its revenues from local exchange telephone services cover the long-run incremental costs of such local exchange telephone services in the aggregate.~~

~~F. Interconnection.~~

~~1. Interconnection arrangements between local exchange carriers shall make available network features, functions, interface points, and other service elements on an unbundled basis. The commission shall, on petition by any party to the proposed interconnection or on its own motion, determine the reasonableness of any interconnection request.~~

~~2. Interconnection arrangements should apply equally and on a nondiscriminatory basis to all local exchange carriers.~~

~~3. Interconnection arrangements shall be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any provider to another carrier will be tolerated.~~

~~4. Local exchange carriers shall provide nondiscriminatory use of pole attachments, conduit space, and rights of way.~~

~~5. Negotiation of interconnection agreements should be completed within 90 days of a bona fide request. Interconnection agreements shall be filed with the commission within 10 days of their execution. Upon complaint of any affected party or on its own motion, the commission may initiate a proceeding to determine if any such agreement is reasonable and nondiscriminatory.~~

~~6. No sooner than 45 days from the initial interconnection request, any party to the request may petition the commission for a hearing in lieu of negotiations or as a result of unsuccessful negotiations. Upon such petition, the commission shall establish a proceeding to determine tariffed prices and service arrangements for interconnection.~~

~~7. Unbundled functional elements of a local exchange carrier's network that are made available through interconnection agreements shall also be made available on an individual tariffed basis within 60 days of filing unless otherwise ordered by the commission.~~

~~G. Terminating traffic compensation.~~

~~1. Any compensation arrangement for the mutual exchange of local traffic should reflect the reciprocal relationship between local exchange carriers and the development of local exchange competition.~~

~~2. The commission may establish at any time, upon application or its own motion, appropriate compensation levels for mutual exchange of local traffic.~~

~~3. Local exchange carriers may only deliver local traffic for termination on another carrier's local network at the compensation level established in conformance with this regulation.~~

~~4. Any compensation arrangements for the mutual exchange of local traffic shall provide for equitable treatment or rates between the local exchange carriers.~~

~~H. Number portability and number assignment.~~

~~1. Consumers shall have the ability to retain the same telephone number if they remain in the same geographic area where the NXX is normally provided, regardless of their chosen local exchange carrier.~~

~~2. True number portability shall be made available when technically and economically feasible.~~

~~3. Interim number portability arrangements shall be utilized until true number portability is available.~~

~~4. To the extent feasible, the incumbent local telephone company shall provide new entrants with reservations for a reasonably sufficient block of numbers for their use.~~

~~I. Universal service. The goals of universal service and affordability of basic local exchange telephone service need to be maintained in a competitive local exchange environment for the citizens of Virginia. The following requirements shall apply:~~

~~1. The commission may, if necessary, establish a Universal Service Fund and applicable payment mechanism. Any such fund shall require the participation and support of all local exchange carriers.~~

~~2. The establishment of a Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone service and the calculation of the subsidy required to support the ubiquity of such service.~~

~~3. The incumbent local exchange companies shall be designated as the carriers of last resort in their current local serving areas until such time as the commission determines otherwise.~~

~~J. Commission authority. The commission may, in its discretion, waive or grant exceptions to any of these rules and may also attach conditions or limitations to any certificate issued under these rules or §56-265.4:4 C of the Code of Virginia.~~

CHAPTER 417.

RULES GOVERNING THE CERTIFICATION AND  
REGULATION OF COMPETITIVE LOCAL EXCHANGE CARRIERS

20 VAC 5-417-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Attestation" means a written statement regarding compliance with a requirement or condition contained in this chapter, signed by an officer, director, or comparable official of the applicant or new entrant.

"Casual user service" means a local exchange telecommunications service of a competitive local exchange carrier or municipal local exchange carrier that does not require a customer to actively subscribe or contract with the competitive local exchange carrier or municipal local exchange carrier to use the service. For example, these services may require alternate billing arrangements such as a calling card to use the service.

"Competitive local exchange carrier" ("CLEC") means an entity certificated to provide local exchange telecommunications services in Virginia after January 1, 1996, pursuant to § 56-265.4:4 B of the Code of Virginia. An incumbent local exchange carrier shall be considered a CLEC in any territory that is outside the territory it was certificated to serve as of December 31, 1995, for which it obtains a certificate to provide local exchange telecommunications services on or after January 1, 1996.

"Customer" means any person, firm, partnership, corporation, or lawful entity that purchases local exchange telecommunications services.

"Incumbent local exchange carrier" or "incumbent" ("ILEC") means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Interconnection" means the point of interface between local exchange carriers' networks. Interconnection can be achieved at different points of the network.

"Local exchange carrier" means a certificated provider of local exchange telecommunications services, whether an incumbent or new entrant.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, or county that operates an electric distribution system in Virginia.

"Municipal local exchange carrier" ("MLEC") means a locality that is certificated to provide local exchange telecommunications services pursuant to § 56-265.4:4 B of the Code of Virginia.

"New entrant" means a CLEC or an MLEC.

20 VAC 5-417-20. Application requirements for certification.

A. An original and 15 copies of an application for a certificate of public convenience and necessity shall be filed with the Clerk of the Commission.

1. The applicant shall deliver a copy of the application to the Division of Communications and a copy to the Division of Economics and Finance at the same time it is filed with the Clerk of the Commission.

2. A copy of all confidential information filed under seal with the Clerk of the Commission in connection with the application shall be provided by the applicant, at the time of filing, to the Division of Communications, the Division of Economics and Finance, and the Office of General Counsel pursuant to 5 VAC 5-20-170.

3. Any amendment or supplement to the application shall be filed in compliance with this section.

B. Notice of the application shall be given to all certificated local exchange carriers and other interested parties in Virginia in a form to be prescribed by the commission pursuant to an order.

C. The application shall identify the applicant including: (i) its name, address, telephone number, fax number, and website address, if any; (ii) the name, address, telephone number, fax number, type of entity (e.g., corporation, limited liability company), and website address of its parent or parents, if any; (iii) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals or comparable officials; (iv) a toll-free telephone number for customer complaints and inquiries, if available; and (v) the name, address, telephone number, fax number, and e-mail address of the primary in-house regulatory contact.

D. An incorporated CLEC applicant shall demonstrate that it is organized under the laws of Virginia as a public service company by providing the following: (i) a copy of its articles of incorporation and all amendments thereto, certified by the Clerk of the Commission, and (ii) a

certificate of good standing. The certificate or certificates shall be dated no more than 60 days prior to the filing date of the application.

E. An unincorporated CLEC applicant shall demonstrate that it is authorized to do business in the Commonwealth of Virginia by providing the following:

1. In the case of an unincorporated entity formed under the laws of Virginia:  
(i) a copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto, certified by the Clerk of the Commission or by the clerk of the court where filed; and (ii) if the entity is of record in the office of the Clerk of the Commission, a certificate of the clerk confirming that the entity is current in the payment of all annual registration or similar fees and late payment penalties, if any, assessed against it. The certificate or certificates shall be dated no more than 60 days prior to the filing date of the application.

2. In the case of an unincorporated entity formed under the laws of a jurisdiction other than Virginia: (i) a copy of the certificate or statement of registration to do business in Virginia issued to it by the commission, certified by the Clerk of the Commission; (ii) a copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto, certified by the secretary of state or other official having custody of business entity records in the jurisdiction of its formation; and (iii) a certificate of the Clerk of the Commission confirming that the entity is current in the payment of all annual registration or similar fees and late payment penalties, if any, assessed against it. The certificate or certificates shall be dated no more than 60 days prior to the filing date of the application.



F. An applicant shall be required to show its financial, managerial, and technical ability to render local exchange telecommunications services.

1. To demonstrate financial ability, each CLEC applicant shall, at a minimum, provide the following:

a. The applicant's or its parent's per books balance sheet and income statement for the two most recent annual periods. Audited financial statements shall be provided, if available, including notes to the financial statements and auditor's letter. Published financial information that includes Securities and Exchange Commission forms 10K and 10Q shall be provided, if available.

b. A continuous performance or surety bond in a minimum amount of \$50,000, in a form to be prescribed by the commission staff. The bond shall be provided to the Division of Economics and Finance within 45 days of an application being deemed complete.

2. To demonstrate financial ability, each MLEC applicant shall, at a minimum, provide the following information:

a. The two most recent annual financial statements for the entity responsible for financing. Financial statements shall include a balance sheet, income statement, cash flow statement, notes to the financial statements, and auditor's letter.

b. Proof of a minimum bond (or other senior debt) rating of "BB" or an equivalent rating by a major rating agency, or a guarantee by a guarantor possessing a credit rating of "BB" or higher from a major rating agency. In lieu

of such minimum bond rating or guarantee, the applicant shall submit other evidence that will demonstrate financial responsibility. This evidence may include, but not necessarily be limited to, letters of credit, irrevocable lines of credit, and surety or performance bonds.

3. To demonstrate managerial and technical ability, each CLEC applicant shall, at a minimum, provide the following information:

- a. A description of its or its parent's history and experience of providing telecommunications or other relevant services, if any;
- b. Any documentation that supports its technical abilities; and
- c. The managerial and technical experience of each principal officer or member and appropriate senior management and technical personnel.

4. To demonstrate managerial and technical ability, each MLEC applicant shall, at a minimum, provide the following information:

- a. A description of the locality's history of providing electric distribution services and other utility services, if any;
- b. A description of its experience in providing telecommunications or other relevant services, if any;
- c. A list of the geographic areas in which it has provided and is currently providing utility, telecommunications, or other relevant services; and
- d. The managerial and technical experience of senior management and technical personnel.

5. The applicant shall provide a list of the states where the applicant, parent, or any affiliate holds authority to provide local exchange telecommunications services, interexchange telecommunications services, or both, and where service is actually being provided, including the date service was commenced for each.

6. The applicant shall also provide a list of any state where authorization was previously held or service was provided and subsequently discontinued and the applicable dates.

7. The applicant shall provide a list of the states where applicant, parent, or any affiliate has had certification or authorization denied, suspended, terminated, or revoked. The list shall include the reason for such denial, suspension, or revocation and copies of any orders issued by a state commission or regulatory authority addressing such action.

G. Each application shall include an illustrative tariff or tariffs, which shall include, at a minimum, the applicant's proposed terms and conditions of service. Applicants that desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with 20 VAC 5-417-50.

H. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in 20 VAC 5-417-50.

I. A CLEC application shall be for statewide authority unless otherwise requested by the CLEC. If less than statewide authority is being requested, the CLEC shall identify the geographic area or areas (e.g., list of exchanges) for which the CLEC is requesting authority to provide service.

J. An MLEC application shall identify the geographic area or areas for which the MLEC is requesting authority to provide service. The applicant should consult § 15.2-2160 A of the Code of Virginia for determining the limits of its proposed service area.

K. An MLEC applicant shall provide an attestation that it will comply with the requirements in 20 VAC 5-417-40, MLEC requirements.

L. The applicant shall provide an attestation that it will comply with the requirements in 20 VAC 5-417-30, Conditions for new entrants.

M. An MLEC applicant shall provide an attestation to the status of its electric distribution facilities in place as of March 1, 2002.

N. The MLEC applicant shall provide a map of its electric distribution facilities. The map should be in sufficient detail to identify the city, town, and county boundaries.

O. Upon request of the commission staff, an applicant shall provide such information with respect to any of its services or practices as may be relevant to the review of the application.

20 VAC 5-417-30. Conditions for new entrants.

A. A new entrant shall, either directly or through arrangements with others, provide the following:

1. Access to 911 and E911 services;
2. White page directory listings;
3. Access to telephone relay services;
4. Access to directory assistance;
5. Access to operator services;

6. Equal access to interLATA long distance carriers;
7. Free blocking of 900- and 700-type services so long as the same requirement applies to incumbent local exchange companies; and
8. Interconnection on a nondiscriminatory basis with other local exchange carriers.

B. An MLEC shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits, or other permanent distribution facilities owned, leased, or operated by the MLEC unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

C. To the extent economically and technically feasible, the new entrant shall provide service to all customers in the same service classification in its designated geographic service areas in accordance with its tariff offerings.

D. The new entrant shall have procedures to prevent deceptive and unfair marketing practices.

E. The new entrant shall be subject to applicable commission rules and regulations, including but not limited to, service quality and billing standards or rules, the rules governing disconnection of local exchange telephone service (i.e., 20 VAC 5-413), and rules governing the discontinuance of local exchange telecommunications services (i.e., 20 VAC 5-423).

F. The new entrant shall comply with the applicable intraLATA toll dialing parity requirements of local exchange carriers as determined in Case No. PUC-1997-00009,

Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: Implementation of IntraLATA Toll Dialing Parity pursuant to the provisions of 47 U.S.C. § 251 (b) (3).

G. A new entrant shall, prior to collecting any customer deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union, which is unaffiliated with the applicant. The Division of Economics and Finance shall be notified of this arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the staff or commission determines it is no longer necessary.

20 VAC 5-417-40. MLEC requirements.

A. An MLEC shall file data annually with the Division of Communications to demonstrate that, in the aggregate, revenues associated with intrastate telecommunications services cover the incremental and required imputed or allocated costs of providing such telecommunications services except in circumstances where permitted by § 56-265.4:4 B 3.

B. An MLEC shall maintain cost studies for each service offered demonstrating that the associated charges: (i) do not include any subsidies, unless approved by the commission; and (ii) take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs incurred by for-profit providers. The applicable study or studies shall be filed with the commission and the Division of Communications within 30 days of a complaint alleging that an individual local exchange service offering or offerings of an MLEC fails to comply with these requirements.

C. An MLEC shall maintain account records for the revenues, expenses, property, and source of investment dollars pertaining to its telecommunications services that are separate from the account records of its affiliated county, city, or town.

D. An MLEC shall provide to the Division of Economics and Finance the annual published financial statements showing the results of operations of its provision of telecommunications services.

E. No MLEC shall acquire by eminent domain the facilities or other property of any telecommunications service provider in order to offer cable, telephone, data transmission, or other information, or online programming services.

20 VAC 5-417-50. Regulation of new entrants providing local exchange telecommunications services.

A. Unless otherwise allowed by the commission, tariffs are required for all local exchange telecommunications service offerings except those that are comparable to "competitive" offerings of any ILEC that does not require tariffs.

B. A new entrant that has received certification to provide local exchange telecommunications services shall submit its proposed initial tariffs to the Division of Communications. A new entrant shall not offer any local exchange telecommunications services until its tariffs have been accepted for filing by the Division of Communications.

C. A new entrant may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings.

D. Unless otherwise allowed by the commission, prices for local exchange telecommunications services provided by a new entrant shall not exceed the highest of the comparable tariffed services provided by the incumbent local exchange carrier or carriers in the same local serving areas. Price ceilings shall be the highest tariffed rates as of January 1, 1996, for comparable services of any ILEC serving the local service area of the new entrant. Price ceilings for a new entrant shall be increased if the highest tariffed rate of an incumbent is raised through applicable regulatory procedures. Unless otherwise determined by the commission, price decreases for an incumbent's service, whether initiated by the carrier or adopted by the commission, shall not require a corresponding decrease in the price ceilings applicable to the new entrant. Tariff changes below this price ceiling plan shall be implemented as follows:

1. Price decreases shall become effective on a minimum of one-days notice to the Division of Communications.

2. Price increases below ceiling rates shall become effective after 30 days' prior written notice is provided to the Division of Communications and affected customers.

a. Written notice to affected customers shall be provided through bill inserts, bill messages, or direct mail.

b. Notice for price increases for a casual user or nonsubscriber service shall be provided through publication once as display advertising in newspapers having general circulation in the areas served by the new entrant. Display advertising shall only be used for notice for casual user or nonsubscriber services unless otherwise authorized by the commission.



c. A copy of the customer notice, the date or dates of such notification, and proof of publication, if applicable, shall be included with the notice to the Division of Communications.

d. A proposed rate increase below ceiling rates, if there are no current customers, shall not require customer notice. The notice to the Division of Communications shall include an attestation by the new entrant that it has no customers.

E. A new entrant may petition the commission for approval of pricing structures or rates that do not conform with the price ceilings. The new entrant shall provide appropriate documentation and rationale to support any request. The petition shall include a public interest analysis.

F. The price ceiling requirements shall not apply to a new entrant's services: (i) that are comparable to services classified as competitive for the incumbent; or (ii) that have been provided regulatory treatment different than that specified by this chapter.

G. Tariff filings and revisions shall be submitted to the Director of the Division of Communications and shall include an original and two copies.

H. Tariffs for new services offered by a new entrant that are not comparable to services classified as competitive for the incumbent or for which the commission has not provided regulatory treatment different than that specified by this chapter shall be filed with 30 days' prior notice to the commission. Price decreases for these services shall become effective on a minimum of one-days notice to the commission. Price increases shall become effective

after 30 days' prior notice to the Division of Communications and affected customers in the manner prescribed by subdivision D 2 of this section.

I. A new entrant may, pursuant to § 56-481.2 of the Code of Virginia, submit an alternative regulatory plan for the commission's consideration in the applicant's certification proceeding or at a later date if it desires regulation different from that specified in this section.

J. A new entrant providing local exchange telecommunications services shall not abandon or discontinue such services except as prescribed in 20 VAC 5-423, Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers.

K. An MLEC may petition the commission for authority to include a subsidy in any of its local exchange services. The commission may approve such a subsidy if it is deemed to be in the public interest. Any commission approved subsidy may not result in a price for the service lower than the price for the same service charged by the ILEC provider in the area.

L. A new entrant requesting authority to expand its geographic service territory not covered by its existing certificate shall file a petition with the commission.

20 VAC 5-417-60. Reporting requirements for new entrants.

A. A new entrant shall provide the name, address, telephone number, fax number, and e-mail address of the person designated to receive all official mailings or notices from the Divisions of Economics and Finance, Communications, and Public Service Taxation. Updates to this information shall be provided to each Division within 30 days of any change.

B. A new entrant shall comply with the following financial reporting requirements:

1. At a minimum annually, or as deemed necessary by the staff or the commission, a new entrant shall be required to provide information to the Division of Economics and Finance that includes the number of access lines served, number of customers, and Virginia intrastate revenue.

2. A new entrant shall, on an annual basis or upon request of the staff or the commission, specify to the Division of Economics and Finance the geographic areas served within Virginia. Such information shall include the identification of specific exchanges where service is provided or offered and the wire centers associated with all collocation arrangements.

C. A new entrant shall comply with the following tax reporting requirements:

1. A new entrant shall file all reports and provide all information required for the administration of tax statutes by the Division of Public Service Taxation. Information filed with the Division of Public Service Taxation shall include financial statements and other statements showing Virginia revenues. If available, audited financial statements shall be filed. A new entrant shall maintain records of all its real property and tangible personal property located in Virginia. Such records shall include the property's original cost and location by city, county, or town and district.

2. A new entrant shall remit the telecommunications relay surcharge prescribed by the commission pursuant to § 56-484.6 of the Code of Virginia and 20 VAC 5-415. The new entrant shall file all reports and make all payments as directed by the Division of Public Service Taxation.

D. If a new entrant establishes exchange boundaries that are not in conformance with the exchange boundaries of the incumbent local exchange carriers, maps depicting the new entrant's exchange boundaries shall be filed with the Division of Communications.

E. A new entrant that has a monopoly over any of its services, whether or not those services are telephone services, if ordered by the commission, shall file annually with the Division of Communications data to demonstrate that its revenues from local exchange telecommunications services cover the long run incremental costs of such services in the aggregate.

F. A new entrant shall, upon request of the commission staff, file additional information with respect to any of its services or practices.

20 VAC 5-417-70. Name changes and use of assumed and fictitious names by a new entrant.

A. A new entrant shall comply with all provisions of Virginia law that regulate the change of name of a business entity. Within 30 days of the acceptance by the Clerk of the Commission of all documents required for the change of name of a business entity not related to the merger or reorganization of a new entrant, the new entrant shall file with the Clerk of the Commission an application to amend and reissue its certificate of public convenience and necessity to provide local exchange telecommunications services in its new name. The application shall conform to the commission's Rules of Practice and Procedure, 5 VAC 5-20.

B. A new entrant shall, before using an assumed or fictitious name in Virginia, comply with §§ 59.1-69 and 59.1-70 of Chapter 5 (§ 59.1-69 et seq. of the Code of Virginia) of Title 59.1, Transacting Business Under Assumed Name. In addition, a new entrant shall:

1. File with the Division of Communications a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia. A new entrant shall identify all its fictitious and assumed names in its tariffs.

2. File with the Division of Public Service Taxation a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia.

20 VAC 5-417-80. Commission authority.

The commission may, in its discretion, waive or grant exceptions to any provision of this chapter and may also attach conditions or limitations to any certificate issued pursuant to this chapter and § 56-265.4:4 B of the Code of Virginia.

CHAPTER 429.

RULES GOVERNING COMPENSATION, NUMBERING, INTERCONNECTION, AND  
OTHER LOCAL INTER-CARRIER MATTERS.

20 VAC 5-429-10. Definitions.

The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Competitive local exchange carrier" ("CLEC") means an entity certificated to provide local exchange telecommunications services in Virginia after January 1, 1996, pursuant to § 56-265.4:4 B of the Code of Virginia. An incumbent local exchange carrier shall be considered a CLEC in any territory that is outside the territory it was certificated to serve as of December 31, 1995, for which it obtains a certificate to provide local exchange telecommunications services on or after January 1, 1996.

"Incumbent local exchange carrier" or "incumbent" ("ILEC") means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Interconnection" means the point of interface between local exchange carriers' networks. Interconnection can be achieved at different points of the network.

"Interim number portability" means the service provided in lieu of true number portability. Interim solutions available from the ILEC, which include remote call forwarding and direct inward dialing, enable customers to change providers without the appearance of changing telephone numbers, but rely on the incumbent's network to process some or all calls.

"Local exchange carrier" ("LEC") means a certificated provider of local exchange telecommunications services, whether an incumbent or new entrant.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, or county that operates an electric distribution system in Virginia.

"Municipal local exchange carrier" ("MLEC") means a locality that is certificated to provide local exchange telecommunications services pursuant to § 56-265.4:4 B of the Code of Virginia.

"Mutual exchange of traffic" means the reciprocal arrangement by which local exchange carriers terminate the local calls of other local exchange carriers' customers on their networks.

"New entrant" means a CLEC or an MLEC.

"Terminating compensation" means the payment or other exchange mechanism used by a local exchange carrier for terminating the local exchange traffic of another local exchange carrier.

"True number portability" means the technical capability of a CLEC to allow customers to retain their telephone number when they change providers (without a change in location) without reliance on calls being routed through the end office where the original NXX is assigned.

"Unbundling" means the process by which a local exchange telephone carrier's network is disaggregated into functional components.

20 VAC 5-429- 20. Interconnection.

A. Interconnection arrangements between local exchange carriers shall make available network features, functions, interface points, and other service elements on an unbundled basis. The commission shall, on petition by any party to the proposed interconnection or on its own motion, determine the reasonableness of any interconnection request.

B. Interconnection arrangements should apply equally and on a nondiscriminatory basis to all local exchange carriers.

C. Interconnection arrangements shall be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any provider to another carrier will be tolerated.

D. Local exchange carriers shall provide nondiscriminatory use of pole attachments, conduit space, and rights-of-way.

E. Negotiation of interconnection agreements should be completed within 90 days of a bona fide request. Interconnection agreements shall be filed with the commission within 10 days of their execution. Upon complaint of any affected party or on its own motion, the commission may initiate a proceeding to determine if any such agreement is reasonable and nondiscriminatory.

F. No sooner than 45 days from the initial interconnection request, any party to the request may petition the commission for a hearing in lieu of negotiations or as a result of unsuccessful negotiations. Upon such petition, the commission shall establish a proceeding to determine tariffed prices and service arrangements for interconnection.

G. Unbundled functional elements of a local exchange carrier's network that are made available through interconnection agreements shall also be made available on an individual tariffed basis within 60 days of filing unless otherwise ordered by the commission.

20 VAC 5-429-30. Terminating traffic compensation.

A. Any compensation arrangement for the mutual exchange of local traffic should reflect the reciprocal relationship between local exchange carriers and the development of local exchange competition.

B. The commission may establish at any time, upon application or its own motion, appropriate compensation levels for mutual exchange of local traffic.

C. Local exchange carriers may deliver local traffic for termination on another carrier's local network only at the compensation level established in conformance with this section.



D. Any compensation arrangements for the mutual exchange of local traffic shall provide for equitable treatment or rates between the local exchange carriers.

20 VAC 5-429-40. Number portability and number assignment.

A. Consumers shall have the ability to retain the same telephone number if they remain in the same geographic area where the NXX is normally provided, regardless of their chosen local exchange carrier.

B. True number portability shall be made available when technically and economically feasible.

C. Interim number portability arrangements shall be utilized until true-number portability is available.

D. To the extent feasible, the ILEC shall provide new entrants with reservations for a reasonably sufficient block of numbers for their use.

E. LECs shall not, under any circumstances, charge for the porting of a customer's telephone number when the customer changes local exchange carriers.

20 VAC 5-429-50. Universal service.

The goals of universal service and affordability of basic local exchange telephone service must be maintained in a competitive local exchange environment for the citizens of Virginia. The following requirements shall apply:

1. The commission may, if necessary, establish a Universal Service Fund and applicable payment mechanism. Any such fund shall require the participation and support of all local exchange carriers.

2. The establishment of a Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone service and the calculation of the subsidy required to support the ubiquity of such service.

3. The ILECs shall be designated as the carriers of last resort in their current local serving areas until such time as the commission determines otherwise.

20 VAC 5-429-60. Commission authority.

The commission may, in its discretion, waive or grant exceptions to any of the provisions of this chapter.